

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
CRIMINAL CASE NO. SC. 0125 OF 2015

UGANDA:.....PROSECUTOR

VERSUS

A1: AKENA NIXON GASFERO

A2: ODONG-YIK ALFRED

A3: OKENY ALFRED Alias KIDEGA:.....ACCUSED

RULING ON PRIMA FACIE CASE

Akena Nixon Gasfero hereinafter referred to as A1, Odongyik Alfred referred to as A2 and Okeny Alfred alias Kidega referred to as A3 were indicted for murder c/s 188 and 189 of the PCA.

It was alleged that the 3 accused persons murdered Okot Geoffrey on the 29/6/2013 at Okwa stream in Lamwo District when they were arraigned before Court; they all pleaded not guilty putting all the essential ingredients of the offence of murder in issue.

The essential ingredients of murder are the following

1. That death of a human being occurred.
2. That death was caused by some unlawful act.
3. That the unlawful act was activated with malice aforethought and lastly that it was the accused persons who caused the unlawful death.

In criminal cases, the burden of proof rests with the prosecution since the law presumes that accused persons innocent under Article 28(3)(a) of the constitution of the Republic of Uganda of 1995.

The standard of proof is very high. The prosecution must prove all the essential ingredients of the offence of murder beyond reasonable doubt.

At the end of the prosecution case, this Court is to make a ruling on whether the prosecution has established a prima facie case against the accused persons before they are put on defence.

Both the prosecution and the defence Counsel made oral submissions on whether the prosecution has established a prima facie case and I have put the submissions into consideration while writing this ruling

A prima facie case has been defined in the Land mark case of R.T. Bhatt V R 1957 EA 332 to mean one where a reasonable tribunal properly directing its mind to the law and evidence could convict if the accused person offers no explanation as rightly quoted by the defence Counsel Mr. Ogik Jude. This would mean that at the close of prosecution case there is sufficient and reliable evidence proving the essential ingredients of the offence.

The evidential value depends on the accuracy, consistency, competency, credibility and reliability and authenticity of the witnesses.

There is no specific number of witnesses required to prove a case but where more than one witnesses testify in respect of a given fact or set of facts, there is need for consistency.

In the instant case, the prosecution called four witnesses.

There is no doubt that Okot Geoffrey the deceased is dead and his body was found floating on the water surface.

The Learned State Attorney submitted that every homicide is presumed unlawful unless it is excusable or accidental. I entirely agree with the legal principle. However in the instant case, the prosecution had to prove that the cause of death was unlawful and the only way they could establish the cause of death was by an examination and dissection of the dead body which is commonly referred to as post-mortem or autopsy.

This is a highly specialized surgical procedure that consists of a thorough examination of a corpse to determine the cause of death and or to evaluate any disease or injury that may be present. It is usually performed by a specialized medical doctor called pathologist. However due to shortage of pathologists in Uganda Courts of law have accepted post mortem reports prepared by qualified doctors with some experience because they study pathology i.e. the branch of medical science that studies the nature, causes and effects of diseases and causes of death. They can competently and authentically with a high degree of certainty and reliability advise court on the cause of death.

Autopsy involves combing the entire body under very conducive environment with the use of medical equipment in search of the cause of death by a person knowledgeable in forensic medicine.

In the instant case, PW1 Openy Dennis J. K who described himself as a comprehensive nurse is the one who filed the PF 48 which was not even referred to him by any police officer. His qualification fall for below that a medical doctor. He held out as a person qualified to carry out post mortem whereas he is not. His evidence on the cause of death is not authentic and reliable because he did not even know what he was supposed to do. The best he could do was to confirm death which even a lay person could do in the circumstances of this case since the body was found floating on the water.

This makes PE1, the purported Post Mortem PF 48 a useless piece of paper with no evidential value.

The prosecution therefore failed to prove that the cause of death was unlawful. The deceased's death could have been as a result of drowning, once there is doubt; it has to be resolved in favour of the accused person.

Once the element of unlawful cause of death is not proved, the remaining elements are for academic reasons.

But let me comment on the evidence of PW3 Okot Moses. He was summoned to come to court as a witness but he claimed he did not know why he was in court. He then claimed he did not know where the deceased was where the deceased was whereas he claimed he was his brother. He would take time to answer questions put to him, and was very inconsistent and uncooperative.

His conduct made the learned State Attorney apply to have him declared as a hostile witness. Even if he later on claimed to be ready to tell Court to truth, his demeanour was that of a very unreliable, inconsistent, timed and confused person which greatly affected the credibility of his evidence.

No wonder, the defence Counsel put to him as the person who killed his brother. His conduct was very suspicious and no reasonable tribunal would rely on his evidence.

The last witness PW4 was equally useless. His alleged response to an alarm promptly and yet he never bothered to inquire from the accused persons if at all he saw them in the stream leaves a lot of doubt and questions. What was the purpose of his response to the alarm? Why did he not ask any questions concerning the alarm to the accused whom he claimed he know very well.

How long did he take to reach the stream after the alarm.

How many people use the stream for bathing and if the accused were suspected what was the mensrea.

In murder cases, mensrea is very important to establish.

With the above said, this Court would not have any evidence given the high standard of proof in criminal cases to convict the accused persons in case they exercise their right to remain silent.

I am afraid the prosecution failed to establish a prima facie case against the accused. They are all accordingly acquitted on no case to answer. This is a typical case where the police did not carry out investigation and the State Attorney then did not perform his duty of directing and advising the police on what to do. No wonder an incompetent person purported to do a post mortem and the state never bothered to correct the flow.

They should be released unless held over other lawful charges.

I make no order as to damages as prayed by the defence Counsel .

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Margaret Mutonyi

Judge

28/4/2016

28/4/2016

Accused in court

Obale Innocent for Prosecution.

Ogik Jude for defence

Anna for clerk.

Ogik: It is for a ruling on prima facie case.

Court: Ruling delivered in the presence of the above.

Right of appeal against ruling explained to state.

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Margaret Mutonyi

Judge

28/4/2016